

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CONNOR SHEA
Claimant

APPEAL NO: 21A-UI-19317-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/24/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
PL 116-136 – Federal Pandemic Emergency Unemployment Compensation (PEUC)

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 16, 2021, (reference 02) unemployment insurance decision that concluded he was overpaid \$4,329.00 in Pandemic Emergency Unemployment Compensation benefits. After proper notice, a telephone hearing was conducted on October 25, 2021. The hearing was held jointly with 21A-UI-19316-SN-T and 21A-UI-19319-SN-T. The claimant participated. Official notice of the administrative records was taken. Exhibit D-1 and D-2 were received into record.

ISSUES:

Whether the claimant's appeal was timely? Whether it has reasonable grounds to be considered otherwise timely?
Is the claimant overpaid Federal Pandemic Emergency Unemployment Compensation (PEUC)?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 24, 2020.

The claimant received federal unemployment insurance benefits through Federal Pandemic Emergency Unemployment Compensation (PEUC). Claimant received \$4,329.00 in federal benefits for the period of September 27, 2020 and December 19, 2020.

The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been affirmed in a decision of the administrative law judge in appeal 21A-UI-09670-SC-T. The claimant appealed 21A-UI-09670-SC-T seeking reversal from the Employment Appeal Board affirmed 21A-UI-09670-SC-T in 21B-UI-09670. The claimant did not appeal 21B-UI-09670 in district court.

A disqualification decision was mailed to claimant's last known address of record on August 16, 2021. The claimant did not receive the decision within ten days. At the time, the claimant had forwarded his mail from that residence to 1623 Bobcat Drive NW, Cedar Rapids, Iowa 52405.

The claimant did not update his address with Iowa Workforce Development when he moved. He received the decision on August 31, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 26, 2021. (Exhibit D-1) The appeal was not filed until August 31, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant's appeal is not timely. He further concludes he does not have jurisdiction to evaluate the merits.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*,

319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant received the decision in this case after the appeal period because he did not update his address. The delay is attributable to his actions rather than to Iowa Workforce Development Department. As a result, the claimant had a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Assuming arguendo, the administrative law judge has jurisdiction the claimant was overpaid PEUC benefits.

PL 116-136 Sec 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(2) PROVISIONS OF AGREEMENT. —

Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

...

(e) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled,

the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

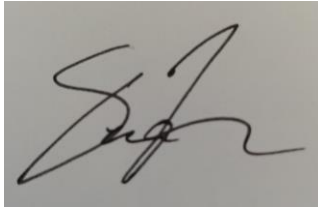
The terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for pandemic emergency unemployment compensation and the payment thereof, except where otherwise inconsistent with the provisions of this section or with the regulations or operating instructions of the Secretary promulgated to carry out this section... See PL 116-136 Sec 2107 (4)(B).

Since the decision disqualifying the claimant has been affirmed, this also disqualifies claimant from receiving Federal Pandemic Emergency Unemployment Compensation (PEUC). The claimant was overpaid \$4,329.00 in Federal Pandemic Emergency Unemployment Compensation (PEUC).

During the hearing, the claimant argued he was still eligible for benefits due to his reading of the claimant's handbook and other provisions. This kind of argument is not availing because this administrative law judge only had jurisdiction to evaluate whether the claimant was overpaid benefits. The issues regarding eligibility were evaluated in 21A-UI-09670-SC-T. The EAB affirmed that decision in 21B-UI-09670.

DECISION:

The unemployment insurance decision dated August 16, 2021, (reference 02), is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant was overpaid \$4,329.00 in Federal Pandemic Emergency Unemployment Compensation (PEUC).



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

November 5, 2021
Decision Dated and Mailed

smn/mh

Note to Claimant: This decision determines you have been overpaid PEUC under the CARES Act. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.